

**Franchise Tax Board****ANALYSIS OF ORIGINAL BILL**

Author: Huffman Analyst: John Pavalasky Bill Number: AB 1083  
Related Bills: See Legislative History Telephone: 845-4335 Introduced Date: February 23, 2007  
Attorney: Daniel Biedler Sponsor: \_\_\_\_\_

**SUBJECT:** Biodiesel Fuel Credit

**SUMMARY**

This bill would allow a tax credit for the sale of qualified biodiesel fuel by a fuel retailer at any retail facility located in California.

**PURPOSE OF THE BILL**

According to the author's office, the purpose of the bill is to facilitate California's transition from traditional carbon-intensive fuels to biodiesel fuel.

**EFFECTIVE/OPERATIVE DATE**

As a tax levy, this bill would be effective immediately and specifically operative for taxable years beginning on or after January 1, 2008, and before January 1, 2023.

**POSITION**

Pending.

**SUMMARY OF SUGGESTED AMENDMENTS**

Technical amendments are necessary and are provided. Department personnel are available to work with the author to resolve the implementation issues discussed in this analysis as well as any other issues that arise as the bill moves through the legislative process.

**ANALYSIS****FEDERAL/STATE LAW**

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). Generally, these credits are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

**Board Position:**

\_\_\_\_\_ S      \_\_\_\_\_ NA      \_\_\_\_\_ NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA        X   PENDING

**Department Director****Date**

Selvi Stanislaus

4/10/07

Federal law currently allows a biodiesel and renewable diesel fuels credit. The credit is equal to \$.50 for each gallon of biodiesel that is used by a taxpayer as fuel in a trade or business or sold at retail and placed in the fuel tank of the buyer's vehicle.

Current state law does not provide a comparable credit.

### THIS BILL

For taxable years beginning on or after January 1, 2008, this bill would provide a credit under the Personal Income Tax Law and the Corporation Tax Law equal to an unspecified amount for each gallon of qualified biodiesel fuel sold during the taxable year by a fuel retailer at any retail facility located in this state.

“Qualified biodiesel fuel” means any biodiesel fuel that satisfies both the following requirements:

- It meets the Low Carbon Fuel Standard (LCFS), to be established pursuant to Executive Order S-01-07.
- The price of each gallon is an unspecified percentage higher than the price of a gallon of regular fuel.

A “fuel retailer” means any person who sells or otherwise provides fuel to consumers.

The amount of expenses otherwise allowable as a deduction is required to be reduced by the amount of the credit.

The bill would require Franchise Tax Board, in consultation with the California Air Resources Board, to prescribe rules and regulations necessary to implement this credit.

This bill would allow any unused credit to be carried over for a total of seven years and specifies that as of January 1, 2023, the credit is repealed.

This bill also states the Legislature’s intent to provide grants to retailers that install tanks and distribution equipment that meet specified low carbon standards.

### IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

- This bill uses terms that are undefined, including “retail facility” as well as “the price of a gallon of regular fuel.” Additionally, the LCFS (under Executive Order S-01-07) that “qualified biodiesel fuel” must meet has not been designed and adopted by the California Air Resources Board. The absence of definitions to clarify terms could lead to disputes with taxpayers and would complicate the administration of this credit.

- The definition of “qualified biodiesel fuel” in this bill does not define the term “biodiesel fuel” to require that the blend stock contain a minimum percentage of biodiesel fuel or that the fuel mixture meet the American Society for Testing and Materials specification D6751-02 for biodiesel fuel (B20) blend stock for distillate fuels. The lack of these requirements could allow the claiming of credits for fuel mixtures with only minor amounts of biodiesel and even those that would never meet standards or be used as fuel.
- Typically, a credit involving an area where the department lacks expertise is certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.
- The authority to make regulations contained in the bill is silent on a specific grant of legislative authority needed for those regulations to be considered “legislative regulations” in a manner similar to the “legislative regulations” authorized in Revenue and Taxation Code section 18152.5(k), relating to small business stock. Without a grant of “legislative regulation” authority, the statutory provisions themselves would need to detail all the rules necessary to implement these credits.
- This bill should include rules for partners or shareholders in pass-through entities (partnerships, including limited liability companies classified as partnerships, and S corporations) to claim the credit. Without such rules, it could be argued that “fuel retailers” organized as a pass-through entity would be prohibited from passing the credit through to their owners. The lack of guidance could cause disputes between taxpayers and the department.

### TECHNICAL CONSIDERATIONS

The bill would allow a qualified fuel retailer a credit for taxable years beginning on or after January 1, 2008, and before January 1, 2023. Therefore, the last fiscal year that a credit would be allowed would be for the period beginning December 1, 2022, and ending on November 30, 2023. However, the repeal date in the bill is January 1, 2023, eleven months before the end of the last taxable year the credit is allowed. The attached amendments resolve this issue by changing the repeal date to December 1, 2023.

### **LEGISLATIVE HISTORY**

SB 73 (Florez, 2007/2008) would allow a credit of \$.30 for each gallon of biodiesel fuel produced or manufactured during the taxable year at any facility located in California. SB 73 is in the Senate Revenue and Taxation Committee.

SB 74 (Florez, 2007/2008) would provide a credit equal to an unspecified percentage of qualified costs paid or incurred to manufacture, process, deliver, or sell biodiesel fuel, including the purchase of property, equipment, buildings, or facilities. SB 74 is in the Senate Revenue and Taxation Committee.

## OTHER STATES' INFORMATION

The laws of *Florida*, *Illinois*, *Minnesota* and *New York* were reviewed because their tax laws are similar to California's income tax laws. *Florida* allows a credit against either the corporate income tax or the franchise tax in an amount equal to the eligible costs in connection with an investment in the production, storage, and distribution of biodiesel in the state, including the costs of constructing, installing, and equipping such technologies in the state. Credits that exceed the corporation's tax liability can be carried forward until the expiration date of December 31, 2012.

*New York* allows a credit equal to \$.01 for each percent of biodiesel per gallon of bioheat purchased on or after July 1, 2006, and before July 1, 2007, for tax years beginning in 2006 and 2007. The maximum credit is \$.20 per gallon. The credit reduces the tax liability and includes carryover provisions.

*Florida*, *Illinois*, and *Minnesota* allow an exemption from sales and use tax on the sale of biodiesel fuel that is 10% biodiesel or more.

## FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved but are anticipated to be significant.

This bill would require additional audit resources to determine the amount of the credit allowed, as well as a new form or worksheet to be developed for the calculation of the credit. As a result, this bill would impact the department's audit, printing, processing, and storage costs for tax returns. The additional costs have not been determined at this time. If the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested.

## ECONOMIC IMPACT

### Revenue Estimate

Because the bill has an unspecified credit amount as of yet, the revenue impact is unknown.

## LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 1083  
As Introduced February 23, 2007

AMENDMENT 1

On page 2, line 30, after "on" strikeout "January 1, 2023" and insert:  
December 1, 2023

AMENDMENT 2

On page 3, line 22, after "on" strikeout "January 1, 2023" and insert:  
December 1, 2023